

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

DELBERT GEORGE GRANT,	)	
	)	
Plaintiff,	)	
vs.	)	NO. CIV-07-965-D
	)	
DENNIS CALLAHAN, <i>et al.</i> ,	)	
	)	
Defendants.	)	

ORDER

Before the Court is the Report and Recommendation [Doc. No. 75] of United States Magistrate Judge Robert E. Bacharach, to whom this matter was referred for initial proceedings pursuant to 28 U.S.C. § 636(b)(1)(B). Plaintiff, an inmate appearing *pro se*, brought this action as a civil rights claim pursuant to 42 U. S. C. § 1983, asserting claims against numerous defendants<sup>1</sup>. All claims except those directed at Defendant Daniels were dismissed in this Court's November 24, 2008 Order [Doc. No. 74]. The current Report and Recommendation addresses Plaintiff's only remaining claims, and recommends the dismissal of those claims because the statute of limitations expired prior to the filing of this action.

In the Report and Recommendation, the Magistrate Judge advised Plaintiff of his right to object to the same and scheduled a December 17, 2008 deadline for filing objections. The Magistrate Judge also advised Plaintiff that a failure to timely object would constitute a waiver of his right to appellate review of the factual and legal issues contained in the Report and

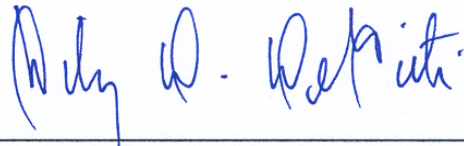
---

<sup>1</sup>As Judge Bacharach correctly notes, Plaintiff's claims are not properly characterized as §1983 claims because, at the relevant time, all named defendants were not state actors, but were federal officers. Because §1983 applies only to state actors, it is inapplicable here. Instead, the asserted claims are properly considered as based on *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). The Magistrate Judge correctly recharacterized the claims as arising solely under *Bivens*. See *Kinnell v. Graves*, 265 F. 3d 1125, 1127 n. 1 (10<sup>th</sup> Cir. 2001) (recharacterizing a *pro se* litigant's §1983 claim against federal officers as a *Bivens* claim).

Recommendation.

Although Plaintiff's deadline for objecting to the Report and Recommendation has expired, he has not filed an objection, nor has he sought an extension of time in which to do so. Accordingly, the Report and Recommendation [Doc. No. 75] is adopted as though fully set forth herein. Plaintiff's claims against Defendant Daniels are DISMISSED. Inasmuch as all claims against the other named defendants were previously dismissed<sup>2</sup>, this case is closed.

IT IS SO ORDERED this 16<sup>th</sup> day of January, 2009.



---

TIMOTHY D. DEGIUSTI  
UNITED STATES DISTRICT JUDGE

---

<sup>2</sup>All claims were dismissed with prejudice except Plaintiff's claim against Dr. McNerny. In the November 14, 2008 Order [Doc. No. 74], those claims were dismissed without prejudice because Plaintiff failed to timely perfect service on Dr. McNerny, despite repeated extensions of the deadline for perfecting service. All other claims are dismissed with prejudice because the statute of limitations has expired on those claims.